

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THAT MEDICAID SECTION 1115 WAIVERS MAY  
5 NOT ALLOW FOR 12-MONTH CONTINUOUS ELIGIBILITY FOR INDIVIDUALS ENROLLED IN THE  
6 MEDICAID EXPANSION PROGRAM; AND AMENDING SECTIONS 53-2-215, 53-6-1304, AND 53-6-1314,  
7 MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 53-2-215, MCA, is amended to read:

12 **"53-2-215. Social Security Act section 1115 waiver.** (1) The department may pursue approval from  
13 the U.S. department of health and human services for implementation in Montana of a health insurance  
14 flexibility and accountability demonstration initiative and other demonstration projects through section 1115  
15 waivers, within the limitations established in this section.

16 (2) The department may implement a demonstration project upon approval of a section 1115 waiver  
17 by the U.S. department of health and human services. The department may:

18 (a) coordinate a demonstration project with a program approved through a section 1915 waiver; or

19 (b) terminate and subsume in a new section 1115 waiver an existing managed care or access  
20 program approved through a section 1915(b) waiver, an optional state plan medicaid service authorized under  
21 53-6-101, an optional state plan eligibility group authorized under 53-6-131, or an existing program approved by  
22 a section 1115 waiver that is administered by the department.

23 (3) The department may initiate and administer section 1115 waivers to more efficiently apply  
24 available state general fund money, other available state and local public and private funding, and federal  
25 money to the development and maintenance of medicaid-funded programs of health services and of other  
26 public assistance services and to structure those programs or services for more efficient and effective delivery  
27 to specific populations.

28 (4) (a) In establishing programs or services in a demonstration project approved through a section

1 1115 waiver, the department shall administer the expenditures under each demonstration project within the  
2 state spending authority that is available for that demonstration project. The department may limit enrollments  
3 in each program within a demonstration project, reduce the per capita expenditures available to enrollees, and  
4 modify and reduce the types and amounts of services available through each program when the department  
5 determines that expenditures can be reasonably expected to exceed the available state spending authority.

6 (b) The department shall develop a contingency plan if there is a spending cap as a condition of the  
7 waiver and the spending cap is exceeded. The contingency plan must address the effects on new programs,  
8 services, or eligibility groups.

9 (5) The department may coordinate the state children's health insurance program authorized under  
10 Title 53, chapter 4, part 10, with a section 1115 waiver for the purpose of increasing the state funding match  
11 available under the waiver and expanding the number of participants in the state children's health insurance  
12 program.

13 (6) The department, subject to the terms and conditions of the section 1115 waiver:

14 (a) shall establish the eligibility groups based upon the funding principles stated in 53-6-101(2);

15 (b) may provide medicaid coverage for one or more optional medicaid eligibility groups;

16 (c) may provide medicaid coverage for one or more specific populations of persons who are not within  
17 the federally authorized medicaid eligibility groups but who are within the requirements of subsection ~~(7)~~(8);

18 (d) may establish the service coverage, eligibility requirements, financial participation requirements,  
19 and other features for the administration and delivery of services to each section 1115 waiver eligibility group;

20 (e) shall set limits on the number of participants for each section 1115 waiver eligibility group;

21 (f) shall set limits on the total expenditures under each demonstration project; and

22 (g) shall set the limits on the total expenditures on the services to be provided to each section 1115  
23 waiver eligibility group.

24 (7) The department may not seek approval for or implement 12-month continuous eligibility through a  
25 section 1115 waiver for individuals who are eligible for medical assistance pursuant to 42 U.S.C.  
26 1396a(a)(10)(A)(i)(VIII).

27 ~~(7)~~(8) The categories of persons that the department may consider for establishment as a section  
28 1115 waiver eligibility group include but are not limited to:

1 (a) low-income parents of children who are eligible to participate in medicaid under 53-6-131 or in the  
2 state children's health insurance program authorized under Title 53, chapter 4, part 10;

3 (b) children who because of limits on enrollment may not be covered through the state children's  
4 health insurance program authorized under Title 53, chapter 4, part 10;

5 (c) children who are eligible to participate in the state children's health insurance program authorized  
6 under Title 53, chapter 4, part 10; and

7 (d) other specific groups of persons who are participants in programs or services funded solely or  
8 primarily through state general funds or who the department determines are in need of specific types of health  
9 care and related services, such as prescription drugs, reproductive health care, and mental health services, and  
10 are without adequate financial means to procure health insurance coverage of those needs.

11 ~~(8)(9)~~ Children participating in a section 1115 waiver eligibility group or children who would be eligible  
12 to participate in the state children's health insurance program are subject to the eligibility criteria applicable  
13 under 53-4-1004, except as provided in subsection ~~(9)~~ (10) of this section, for participation in the state  
14 children's health insurance program and must receive benefits as provided through the state children's health  
15 insurance program under 53-4-1005.

16 ~~(9)(10)~~ (a) Except as provided in this subsection ~~(9)~~ (10), the eligibility for the section 1115 waiver  
17 eligibility groups may not exceed 150% of the federal poverty level.

18 (b) The department may establish eligibility at greater than 150% but no more than 200% of the  
19 federal poverty level for any of the following groups established for purposes of a section 1115 waiver:

20 (i) participants in the state children's health insurance program;

21 (ii) participants in a group that may be covered under the state children's health insurance program;

22 (iii) participants in a family planning program;

23 (iv) participants in a group composed of persons previously served through a program funded with  
24 state general fund money and other nonmedicaid money; or

25 (v) participants in a group composed of persons with a significant need for particular services that are  
26 not readily available to that population through insurance products or because of personal financial limitations.

27 (c) In establishing the eligibility criteria based upon federal poverty levels, the department shall select  
28 levels to ensure that the resulting expenditures will remain within the available funding and will conform with the

1 terms and conditions of approval by the U.S. department of health and human services.

2 (d) The department may adopt additional programmatic and financial eligibility criteria for a section  
3 1115 waiver eligibility group in order to appropriately define the subject population, to limit use for fiscal and  
4 programmatic purposes, to prevent improper use, and to conform the administration of the program with the  
5 terms and conditions of the section 1115 waiver.

6 (e) Eligibility criteria applicable to a section 1115 waiver eligibility group need not conform to the  
7 criteria applicable to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not  
8 encompassed within the demonstration project.

9 ~~(10)~~(11) (a) For each section 1115 waiver eligibility group, the department shall establish the program  
10 benefit or benefits to be available to the participants in the group.

11 (b) Program benefits may be in the form of:

12 (i) assistance in the payment of health insurance premiums for health care coverage through an  
13 employer or other existing group coverage available to the program enrollee;

14 (ii) assistance in the payment of health insurance premiums for health care coverage that meets a set  
15 of defined standards and limitations adopted by the department in consultation with the commissioner of  
16 insurance and obtained from participating private insurers or through self-insured pools;

17 (iii) premium purchase for insurance coverage on behalf of children who are 18 years of age or  
18 younger for the defined set of health care and related services adopted by the department for the state  
19 children's health insurance program authorized in Title 53, chapter 4, part 10; or

20 (iv) coverage of a defined set of health care and related services administered directly by the  
21 department on a fee-for-service basis.

22 (c) The department may limit the types of program benefits available to enrollees in a program. For  
23 programs in which the department provides for more than one type of program benefit, the department may  
24 require that enrollees, either as a whole or on an individual basis based on certain circumstances, use certain  
25 types of program benefits in lieu of using other types of program benefits.

26 (d) The department shall, as necessary to maintain expenditures for a program within the available  
27 funding for that program, set monetary limitations on the total benefit amounts available on a periodic basis for  
28 an enrollee through that program, whether that benefit is in the form of premium assistance, premium purchase,

1 or a set of covered services.

2 ~~(11)~~(12) The benefits for a section 1115 waiver eligibility group may be in the form of a defined set of  
3 covered services consisting of one or more of the mandatory and optional medicaid state plan services  
4 specified in 53-6-101 or other health-care related services. The department may select the types of services  
5 that constitute a defined set of covered services for a section 1115 waiver eligibility group. The department may  
6 provide coverage of a service not specified in 53-6-101 if the department determines the service to be  
7 appropriate for the particular section 1115 waiver eligibility group. The department may define the nature,  
8 components, scope, amount, and duration of each covered service to be made available to a section 1115  
9 waiver eligibility group. The nature, components, scope, amount, and duration of a covered service made  
10 available to a section 1115 waiver eligibility group need not conform to those aspects of that service as defined  
11 by the department for delivery as a covered service to another section 1115 waiver eligibility group or to a  
12 medicaid eligibility group that is not encompassed within a section 1115 waiver.

13 ~~(12)~~(13) The department may adopt financial participation requirements for enrollees in a section 1115  
14 eligibility group to foster appropriate use among enrollees and to maintain the fiscal accountability of the  
15 program. The department may adopt financial participation requirements, including but not limited to  
16 copayments, payment of monthly or yearly enrollment fees, or deductibles. The requirements may vary among  
17 the section 1115 waiver eligibility groups. In adopting financial participation requirements for enrollees selecting  
18 coverage as provided in subsection ~~(10)(b)(iv)~~ (11)(b)(iv), the department may not adopt cost-sharing amounts  
19 that exceed the nominal deductible, coinsurance, copayment, or similar charges adopted by the department to  
20 apply to categorically or medically needy persons for a service pursuant to the state medicaid plan.

21 ~~(13)~~(14) (a) The department shall adopt rules as necessary for the implementation of a section 1115  
22 waiver. Rules may include but are not limited to:

- 23 (i) designation of programs and activities for implementation of a section 1115 waiver;
- 24 (ii) features and benefit coverage of the programs;
- 25 (iii) the nature, components, scope, amount, and duration of each program service;
- 26 (iv) appropriate insurance products and coverage as benefits;
- 27 (v) required enrollee eligibility information;
- 28 (vi) enrollee eligibility categories, criteria, requirements, and related measures;

- 1 (vii) limits upon enrollment;
- 2 (viii) requirements and limitations for service costs and expenditures;
- 3 (ix) measures to ensure the appropriateness and quality of services to be delivered;
- 4 (x) provider requirements and reimbursement;
- 5 (xi) financial participation requirements for enrollees;
- 6 (xii) use measures; and
- 7 (xiii) other appropriate provisions necessary for administration of a demonstration project and for
- 8 implementation of the conditions placed upon approval of a section 1115 waiver by the U.S. department of
- 9 health and human services.

10 (b) Unless required by federal law or regulation, the department may not adopt rules that exclude a  
11 child from medicaid services or require prior authorization for a child to access medicaid services if the child  
12 would be eligible for or able to access the services without prior authorization if the child was not in foster care.

13 ~~(14)~~(15) The department shall administer the programs and activities that are subject to a section 1115  
14 waiver in accordance with the terms and conditions of approval by the U.S. department of health and human  
15 services. The department may modify aspects of established programs and activities administered by the  
16 department as may be necessary to implement a section 1115 waiver as provided in this section.

17 ~~(15)~~(16) The department may seek an initial duration and durational extensions for a section 1115  
18 waiver as the department determines appropriate for demonstration and fiscal considerations.

19 ~~(16)~~(17) The department shall provide a report to the legislature, as provided in 5-11-210, on the  
20 conditions of approval and the status of implementation for each section 1115 waiver approved by the U.S.  
21 department of health and human services. For any proposed section 1115 waiver not approved by the U.S.  
22 department of health and human services, the department shall provide to the next legislative session a report  
23 on the basis for disapproval and an analysis of the fiscal costs and programmatic impacts of serving the  
24 persons within the proposed section 1115 waiver eligibility groups through eligibility under one of the optional  
25 medicaid eligibility categories established in federal law and authorized by 53-6-131.

26 ~~(17)~~(18) The department shall present a section 1115 waiver proposal to the appropriate medicaid  
27 advisory council, which must include consumer advocates, prior to the submission of the proposal to the federal  
28 government.

1           ~~(18)~~(19) The department shall present a section 1115 waiver proposal to the house appropriations  
 2 committee or, during the interim, the children, families, health, and human services interim committee for review  
 3 and comment at a public hearing prior to the submission of the proposal to the federal government for formal  
 4 approval and shall also present the section 1115 waiver after final approval from the federal government.

5           ~~(19)~~(20) (a) The department shall provide for a public comment period on the proposed section 1115  
 6 waiver at least 60 days before the submission of the section 1115 waiver application to the federal government  
 7 for formal approval.

8           (b) The department shall give notice of the proposal by announcing the pending submittal, stating its  
 9 general purpose, and informing the public that information on the proposal is available on the department's  
 10 website.

11           (c) The department shall provide for public comment through electronic means or mail and shall  
 12 provide for a public forum in at least one location at which members of the public can submit views on the  
 13 proposal. The department shall consider comments received and make any appropriate changes to the waiver  
 14 request before submitting it to the federal government.

15           (d) The department shall post on its website the waiver concept paper, formal correspondence  
 16 regarding a waiver proposal, and the final approved waiver, including documents received from the centers for  
 17 medicare and medicaid services."

18

19           **Section 2.** Section 53-6-1304, MCA, is amended to read:

20           **"53-6-1304. (Temporary) Montana HELP Act program -- eligibility for coverage of health care**  
 21 **services -- exceptions.** (1) An individual is eligible for coverage of health care services provided pursuant to  
 22 this part if the individual meets the requirements of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

23           (2) Eligibility for individuals covered under this part must be redetermined when an individual reports a  
 24 change in circumstances. The change must be reported within 10 days of the time the individual knows of the  
 25 change.

26           ~~(2)~~(3) The department may serve individuals who are eligible for medicaid-funded services pursuant  
 27 to this part through the medical assistance program established in Title 53, chapter 6, part 1, if the individuals  
 28 would be served more appropriately because the individuals:

- 1 (a) have exceptional health care needs, including but not limited to medical, mental health, or
- 2 developmental conditions;
- 3 (b) live in a geographical area, including an Indian reservation, that would not be effectively or
- 4 efficiently served through this part;
- 5 (c) need continuity of care that would not be available or cost-effective through this part;
- 6 (d) are exempt under the waiver implementing this part as of July 1, 2019; or
- 7 (e) are otherwise exempt under federal law. (Terminates June 30, 2025--secs. 38, 48, Ch. 415, L.
- 8 2019.)"

9

10 **Section 3.** Section 53-6-1314, MCA, is amended to read:

11 **"53-6-1314. (Temporary) Disenrollment for failure to report change in circumstances.** (1) (a) A

12 program participant shall report to the department a permanent increase in income that would affect the

13 participant's eligibility for the program. The change must be reported within ~~30~~ 10 days of the time the

14 participant knows of the change in income.

15 (b) A short-term increase in income that is caused by overtime pay or other nonregular payments and

16 that will not be sustained over time does not qualify as a permanent increase in income for the purposes of this

17 section.

18 (2) Disenrollment may occur only after the state conducts an administrative review and determines

19 the participant is ineligible for medicaid coverage under any eligibility category. (Terminates June 30, 2025, on

20 occurrence of contingency--sec. 48, Ch. 415, L. 2019.)"

21

22 NEW SECTION. **Section 4. Direction to the department of public health and human services.** No

23 later than September 1, 2021, the department of public health and human services shall submit an amendment

24 to the August 26, 2019, section 1115 medicaid demonstration amendment and extension application entitled

25 "Montana health and economic livelihood partnership (HELP) demonstration program, (project number 11-W-

26 00300/8)" to eliminate the request for approval of 12-month continuous eligibility.

27

- END -